

STATE OF MICHIGAN
COURT OF APPEALS

AMERICAN HOME MORTGAGE
ACCEPTANCE,

UNPUBLISHED
September 11, 2008

Plaintiff-Appellant,

v

CITY OF DETROIT, BUILDING & SAFETY
ENGINEERING DEPARTMENT, and
DIRECTOR BUILDING & SAFETY
ENGINEERING DEPARTMENT,

No. 279377
Wayne Circuit Court
LC No. 06-621826-CH

Defendants-Appellees.

Before: Whitbeck, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court order granting defendants' motion for summary disposition. Because plaintiff was not entitled to notice and a hearing under the applicable statute, there was no due process violation, and we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On October 28, 2000, a single-family structure at 9115 Vaughan was found to be in violation of the Detroit Building Code. Notice was given¹ and, at a hearing in 2001, it was determined that the structure was to be demolished. Defendants filed a lis pendens stating that proceedings had begun for the building on the Vaughan property to be demolished as an unsafe structure with costs of demolition to be assessed against the property. In August/September 2004, the demolition order was deferred with conditions that the building not become open to trespass or damaged to the point of collapse. The deferral stated that if the conditions of the deferral were not followed, defendants would proceed with demolition without further hearings.

A document titled Vacating Notice of Lis Pendens was dated July 30, 2004 and recorded on September 21, 2004. The vacating document stated that the lis pendens "should be vacated for the reason that said cause has been discontinued." On August 2, 2004, a mortgage was signed in which plaintiff was the lender and its nominee, Mortgage Electronic Registration

¹ Notice was given on December 18, 2000 to the following "owners and interested parties": 39119 LLC, Paine Webber Real Estate, Mortgage Corp of America, MRP 108 LTD, Chase Bank of Texas, and Mortgage Corp of America.

Systems, Inc. (MERS), was the mortgagee on the Vaughan property. On June 29, 2005, MERS, as plaintiff's nominee, received a Sheriff's Deed on Mortgage Sale due to default under the mortgage. The redemption period for the Vaughan property was six months from the date of the sheriff's sale. In a letter dated October 19, 2005, defendants notified plaintiff that an inspection on October 6, 2005, revealed the building on the Vaughan property was open to trespass and that defendants were going to proceed with demolition as originally ordered. The building was demolished on November 19, 2005.

In response to defendants' motion for summary disposition, plaintiff claimed that because the *lis pendens* had been vacated, due process and the statute required both notice and another hearing prior to the building's demolition. Defendants countered that plaintiff was not entitled to notice and a hearing because it was not the record titleholder of the property. The trial court granted summary disposition in favor of defendants. A trial court's decision on a motion for summary disposition is reviewed *de novo*. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A due process violation is unfounded if there is no entitlement to receive notice under state or local law. *Foote v City of Pontiac*, 161 Mich App 60, 65; 409 NW2d 756 (1987).

MCL 125.538 *et seq.* sets forth the procedure for a municipality to follow when demolishing a dangerous building. MCL 125.540 states in pertinent part:

- (1) Notwithstanding any other provision of this act, if a building or structure is found to be a dangerous building, the enforcing agency shall issue a notice that the building or structure is a dangerous building.
- (2) The notice shall be served on the owner, agent, or lessee that is registered with the enforcing agency under section 125. If an owner, agent, or lessee is not registered under section 125, the notice shall be served on each owner of or party in interest in the building or structure in whose name the property appears on the last local tax assessment records.
- (3) The notice shall specify the time and place of a hearing on whether the building or structure is a dangerous building. The person to whom the notice is directed shall have the opportunity to show cause at the hearing why the hearing officer should not order the building or structure to be demolished, otherwise made safe, or properly maintained. [MCL 125.540.]

The holder of a sheriff's deed has a contingency interest in the property with respect to title ownership. *Kubczak v Chemical Bank & Trust Co*, 456 Mich 653, 661; 575 NW2d 745 (1998). That contingency interest does not vest in the holder of the sheriff's deed until the expiration of the redemption period. *Id.* During the redemption period, the mortgagors have the right to redeem as well as the right of possession and benefits of ownership. *Id.* at 660.

Plaintiff's nominee under the mortgage, MERS, received a sheriff's deed dated June 29, 2005. The six-month redemption period expired on December 29, 2005. During that redemption period, plaintiff held only a contingency interest in the Vaughan property. See *Kubczak, supra* at 661. That contingency did not vest into title ownership until December 29, 2005, when the redemption period expired. See *id.* The statute mandating notice and a hearing does not require an enforcing agency to give notice to contingent title owners or mortgagee lenders. Rather, it

requires notice be given to owners. MCL 125.540(2). Accordingly, plaintiff was not entitled to notice and a hearing under the statute, and therefore there was no due process violation. See *Foote, supra* at 65.

Affirmed.

/s/ William C. Whitbeck
/s/ Richard A. Bandstra
/s/ Pat M. Donofrio